

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Petition of	)	CSR-	
	)	PSID #008466	
TIME WARNER CABLE INC.)		
	)	Elmwood Park, Village of	WI0049
For Determination of	)	Kenosha, City of	WI0498
Effective Competition	)	Mt. Pleasant, Village of	WI0050
	)	North Bay, Village of	WI0894
	)	Pleasant Prairie, Village of	WI0500
	)	Racine, City of	WI0006
	)	Somers, Town of	WI0499
	)	Wind Point, Village of	WI0048

To: Chief, Media Bureau

PETITION FOR SPECIAL RELIEF

Time Warner Cable Inc. ("Time Warner Cable"), by its attorneys, and pursuant to Sections 76.7, 76.905(b) and 76.907 of the Commission's rules,¹ hereby petitions the Commission for a finding that Time Warner Cable's cable television system serving the above-captioned communities (unless otherwise noted, individually "Franchise Area" and collectively "Franchise Areas") is subject to effective competition² and therefore exempt from any rate regulation imposed pursuant to Section 623 of the Communications Act of 1934 (the "Act").³

¹ 47 C.F.R. §§ 76.7, 76.905(b), 76.907.

² Pursuant to Section 76.910 of the Commission's rules, rate regulatory authority may be exercised only by a local franchising authority ("LFA") that has been properly certified. 47 C.F.R. § 76.910. To the extent that any political subdivision covered by this petition is an LFA and has been certified to regulate rates in accordance with the Commission's rules, Time Warner Cable respectfully requests that the Commission revoke such certification pursuant to Section 76.914(c). 47 C.F.R. § 76.914(c). To the extent that franchising responsibilities of any political subdivision covered by this petition have been reassigned to another governmental body, *e.g.*, pursuant to legislation providing for state-issued franchises, then that political subdivision is no longer an LFA and obviously would no longer have rate regulatory authority. In such event Time Warner Cable is nevertheless seeking an effective competition determination to achieve the full competitive flexibility associated therewith.

³ 47 U.S.C. § 543. Time Warner Cable requests that, consistent with Commission precedent, any FCC grant of

I. TIME WARNER CABLE IS SUBJECT TO LEC EFFECTIVE COMPETITION IN THE FRANCHISE AREAS

Pursuant to Section 623(1)(1)(D) of the Act (the “LEC Test”), a cable system is considered to be subject to effective competition (and therefore exempt from rate regulation) where

a local exchange carrier [“LEC”] or its affiliate (or any multichannel video programming distributor using the facilities of such carrier or its affiliate) offers video programming services directly to subscribers by any means (other than direct-to-home satellite services) in the franchise area of an unaffiliated cable operator which is providing cable service in that franchise area, but only if the video programming services so offered in that area are comparable to the video programming services provided by the unaffiliated cable operator in that area.⁴

This Commission has incorporated this test in Section 76.905(b)(4) of its rules.⁵ As shall be shown below, the LEC Test is met in the Franchise Areas due to the presence of AT&T Wisconsin (“AT&T”), the incumbent local exchange carrier in each of the Franchise Areas, which also provides its multichannel video service U-verse to households located therein.

A. AT&T Is A Local Exchange Carrier

The first prong of the LEC Test requires a showing that AT&T is a local exchange carrier or is affiliated with one.⁶ The Commission has long treated AT&T as a “local exchange carrier” in the effective competition context.⁷ Furthermore, AT&T’s own marketing and promotional materials acknowledge that AT&T provides local and long distance telephone service to

effective competition in the Franchise Areas be effective as of the date of filing of this petition. *See, e.g., Altrio Communications, Inc. v. Adelphia Communications Corporation*, 17 FCC Rcd 22955, ¶ 5 (Med. Bur. 2002) (Commission order released September 26, 2002 found that Adelphia was subject to effective competition in the Arcadia, California franchise area as of October 1, 2001).

⁴ 47 U.S.C. § 543(l)(1)(D).

⁵ 47 C.F.R. § 76.905(b)(4).

⁶ 47 U.S.C. § 543(l)(1)(D).

⁷ *See Charter Communications Entertainment II, L.P.*, 12 FCC Rcd 23207, 23212, at para. 10 (Cab. Serv. Bur. 1997).

residents in all the Communities,⁸ AT&T is registered with the Wisconsin Public Service Commission as a local exchange carrier in each of the Franchise Areas,⁹ and AT&T affirmatively attests that it is indeed “a local exchange carrier in portions of the State of Wisconsin.”¹⁰ Accordingly, there can be no doubt that AT&T is a local exchange carrier.

B. AT&T’s Multichannel Video Service is Offered In All The Communities

Service of a multichannel video programming distributor (“MVPD”) is deemed to be offered for purposes of effective competition

(1) [w]hen the multichannel video programming distributor is physically able to deliver service to potential subscribers, with the addition of no or only minimal additional investment by the distributor, in order for an individual subscriber to receive service; and (2) [w]hen no regulatory, technical or other impediments to households taking service exist, and potential subscribers in the franchise area are reasonably aware that they may purchase the services of the multichannel video programming distributor.¹¹

This prong of the LEC Test includes MVPDs that are local exchange carriers.¹² As demonstrated below, this prong is met in all the Franchise Areas.

1. AT&T Is Physically Able To Offer Multichannel Video Service To All The Households In Each Of The Franchise Areas.

AT&T is physically able to provide multichannel video programming services to subscribers in all the Franchise Areas. As mentioned above, AT&T’s multichannel video/cable service, marketed as U-Verse, is currently offered to customers in each of the Franchise Areas.

⁸ Exhibit A, AT&T Marketing Materials distributed in the Franchise Areas. *See also* AT&T’s website at <<http://uversel.att.com/un/launchAMSS.do>>, which provides customers with service offerings, pricing and other information to sign up for U-Verse services.

⁹ Exhibit B, Wisconsin Public Service Commission listing of local exchange carriers by community, available at <<http://psc.wi.gov/apps40/teleprovider/default.aspx>>.

¹⁰ Exhibit C, Declaration of Dan Alto, Director-Product Marketing Management of AT&T Services, Inc., an affiliate of AT&T Wisconsin, at ¶ 1.

¹¹ 47 C.F.R. § 76.905(e).

¹² *Implementation of Cable Act Provisions of the Telecommunications Act of 1996*, Report and Order, 14 FCC Rcd 5296, ¶¶ 9-15 (1999) (“*Cable Reform Order*”).

In response to a request under Commission rule Section 76.907(c) pertaining to the scope of its U-Verse service in the Franchise Areas,¹³ AT&T confirms that it “is technically and actually able to provide service that substantially overlaps” Time Warner Cable’s service footprints in each of the Franchise Areas,¹⁴ and that actually serve residents in each:

With AT&T U-Verse TV service, AT&T offers video programming services directly to subscribers in the following communities: Elmwood Park; Kenosha; Mt. Pleasant; North Bay; Pleasant Prairie; Racine; Somers; and Wind Point ...¹⁵

Time Warner Cable construction personnel interact daily and regularly with AT&T construction crews in the field, observing and coordinating the buildout of AT&T system in the Franchise Areas. Given this interaction and their technical expertise, Time Warner Cable’s personnel are professionally and personally qualified to confirm to AT&T’s levels of buildout of its cable system in each Franchise Area. As attested to in the attached declaration of Ralph Newcomb, Time Warner Cable’s Vice President of Technical Operations, the Time Warner Cable employee who oversees a staff that operates daily in each of the communities and has a familiarity with AT&T’s extensive video facilities in each, AT&T’s cable system is now able to serve virtually all of the occupied households in each of the Franchise Areas.¹⁶ This assessment is entirely consistent with AT&T’s acknowledgement that AT&T confirms that it is “actually able to provide service that substantially overlaps” each of the Franchise Areas. This comprehensive buildout also well exceeds the levels deemed sufficient in other instances where

¹³ 47 C.F.R. § 76.907(c).

¹⁴ Exhibit C, Declaration of Dan Alto, Director-Product Marketing Management of AT&T Services, Inc., an affiliate of AT&T Wisconsin, at ¶ 3.b.

¹⁵ *Id.* at ¶ 3.a.

¹⁶ See Exhibit D, Declaration of Ralph Newcomb, Vice President of Technical Operations for Time Warner Cable.

the Commission has found a franchise area subject to effective competition under the LEC Test.¹⁷

Given the sensitive nature of the extent of AT&T's current operations, current customer figures and the geographic scope of its service in the Franchise Areas, should the Bureau require additional details to confirm AT&T assertion that its operations "substantially overlap" Time Warner Cable's in each of the Franchise Areas, we hereby request, as provided in Section 76.907(c) of the Commission's rules, that the Bureau on its own motion request AT&T to produce additional detailed information regarding such matters into the record.¹⁸

As also confirmed by AT&T, AT&T has embarked on an aggressive marketing campaign to promote its U-Verse service in each of the Franchise Areas.¹⁹ Examples of AT&T marketing materials distributed in the Franchise Areas and available on the Internet are also attached in Exhibit A.

In light of the extensive availability of AT&T's U-Verse service to households in each of the Franchise Areas, its ongoing service and marketing activities, and the fact that it is the incumbent local exchange carrier in all of the Franchise Areas and in surrounding areas, AT&T's service is indeed sufficient to meet the "physically able" requirement of the LEC Test.

¹⁷ See, e.g., *Paragon Communications, Inc. d/b/a Time Warner Cable (San Antonio, TX)*, 22 FCC Rcd 4899, ¶ 6 (Med. Bur. 2007) (LEC test met where there is a demonstration of 30% LEC buildout); *Kansas City Cable Partners (Shawnee, KS)*, 18 FCC Rcd 14187, ¶ 7 (Med. Bur. 2003) (LEC test met where there is a demonstration of 15% LEC buildout); *Kansas City Cable Partners (Overland Park, KS)*, 18 FCC Rcd 1546, ¶ 6 (Med. Bur. 2003) (LEC test met where there is a demonstration of 15% LEC buildout); *Cablevision of Boston (Boston, MA)*, 17 FCC Rcd 4772, ¶¶ 7, 18 (2002), *affirming* 16 FCC Rcd 14056 (Cab. Ser. Bur. 2001) (LEC test met where there is a demonstration of 13% LEC buildout).

¹⁸ 47 C.F.R. § 76.907(c) ([W]ith respect to petitions filed seeking to demonstrate the presence of effective competition pursuant to § 76.905(b)(4), the Commission may issue an order directing one or more persons to produce information relevant to the petition's disposition.). In order to respect AT&T's desire to protect such information, Time Warner Cable would not object to such information being submitted under seal or subject to a protective order, and will agree to restrict access to any submitted information to only those persons directly participating in this proceeding.

¹⁹ Exhibit C, at 3.e.

2. No Regulatory, Technical Or Other Impediments Exist For Households To Receive AT&T's Service.

AT&T states that it “does not face regulatory, technical, or other impediments to households” in the Franchise Areas taking its U-verse service.²⁰ As also explained by AT&T, AT&T is authorized to provide service throughout the entire state of Wisconsin pursuant to a state issued video service authorization.²¹ In addition, as AT&T's marketing materials attached as Exhibit A demonstrate that residents of all the Franchise Areas need only contact AT&T to activate service.²² These facts, coupled with AT&T's actual franchised service to residents in the communities, prove that there are no regulatory, technical or other impediments to the receipt of AT&T's service by residents of all the Franchise Areas.

3 . Potential Subscribers In The Franchise Areas Are Reasonably Aware That They May Purchase AT&T's Service

Under this element of the test, cable operators may rely on “advertising in regional or local media, direct mail, or any other marketing outlet” to demonstrate that potential subscribers in the franchise area are reasonably aware of the competitor's service.²³ Exhibit A includes AT&T advertising and marketing materials targeted to residents of the Franchise Areas. These materials, which include door hangers, brochures and direct mailings, have been distributed to households and residents in each of the Franchise Areas. These materials, combined with various promotional events in the Franchise Areas, have served to inform residents of the existence of AT&T and its service offerings. Furthermore, as residents of the Franchise Areas sign up for AT&T's service, it is fair to assume that other residents throughout have become

²⁰ Exhibit C, at 3.d. Copy of AT&T's Wisconsin Statewide Video Franchise also attached as Exhibit E.

²¹ Exhibit C, at 3.d.

²² See also AT&T's website at <<http://uversel.att.com>>, which provides customers with service offerings, pricing and other information to sign up for U-verse services.

²³ *Cable Reform Order* at ¶ 11.

reasonably aware of AT&T's service offering.²⁴ Given these marketing efforts, as well as AT&T's actual service to homes in the Franchise Areas, residents are certainly "reasonably aware" that they may purchase AT&T's service, and AT&T meets the offer requirement of the LEC Test.

C. AT&T OFFERS COMPARABLE MULTICHANNEL VIDEO PROGRAMMING IN ALL THE COMMUNITIES

Effective competition exists where the programming offered by the MVPD competitor is "comparable" to the programming offered by the unaffiliated cable operator. Pursuant to Section 76.905(g), comparable programming exists when a competing multichannel video programming distributor offers at least twelve channels of video programming, including at least one channel of nonbroadcast service programming.²⁵ As demonstrated by AT&T's channel lineup, included with the marketing materials provide as Exhibit A, AT&T offers over 300 channels of programming, including numerous nonbroadcast programming services such as ESPN, Home Box Office ("HBO") and CNN, as well as numerous local television broadcast stations such as WTMJ(NBC), WISN(ABC), WITI(Fox) and WDJT(CBS). This compares closely with the programming available on Time Warner Cable's cable system.²⁶ Thus, as defined by the Commission, AT&T offers comparable multichannel video programming to current and potential subscribers in all of the Franchise Areas.

Accordingly, Time Warner Cable has demonstrated that the LEC Test effective competition test has been met for the Franchise Areas.

²⁴ See *Time Warner Cable, Petition for Determination of Effective Competition*, Memorandum Opinion and Order (Orlando, FL et al.), DA 99-1651, ¶ 16 (Cable Serv. Bur., rel. Aug. 19, 1999) ("We find that potential subscribers in Orange County are reasonably aware that they may receive competing video service because of BellSouth's advertising and marketing campaign. The fact that BellSouth has a substantial number of subscribers in the franchise areas supports this finding.").

²⁵ 47 C.F.R. § 76.905(g).

²⁶ See Exhibit F, Time Warner Cable's local cable system channel directory.

CONCLUSION

Because Time Warner Cable has demonstrated that it is subject to effective competition pursuant to Section 623 of the Act and Section 76.905(b) of the Commission's rules for the above-captioned Franchise Areas, Time Warner Cable respectfully requests that the Commission expeditiously find that Time Warner Cable's cable system serving those Franchise Areas is not subject to rate regulation as to basic cable service or other forms of rate regulation specified in 47 U.S.C. § 543 and revoke the LFAs' certification to regulate basic rates as appropriate.

Undersigned counsel have read the foregoing Petition, and to the best of such counsels' knowledge, information and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and is not interposed for any improper purpose.

Respectfully submitted,

Time Warner Cable, Inc.

By:


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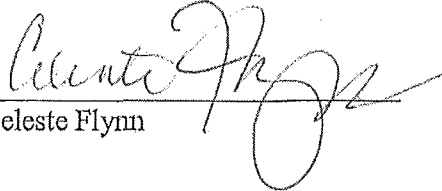
Its Attorneys

Dated: June 12, 2012

DECLARATION

I, Celeste Flynn, hereby declare under penalty of perjury that:

1. I am the Vice President of Government Relations -- Wisconsin for Time Warner Cable, the operator of the cable system that serves the specific Franchise Areas involved in the foregoing Petition for Special Relief ("Petition").
2. I have read the foregoing Petition and am familiar with the contents thereof and the matters referred to therein.
3. I have reviewed Time Warner Cable's respective cable subscriber numbers for each of the communities involved in the Petition, as well as the DBS subscriber numbers provided by SBCA and allocated to each as described in the Petition. Time Warner Cable is the largest multichannel video program provider serving each of the Franchise Areas.
4. The facts contained within the Petition are true and correct to the best of my knowledge, information and belief.


Celeste Flynn

Date: 5/16/12